

**DISCIPLINE COMMITTEE OF
THE COLLEGE OF DENTAL HYGIENISTS OF ONTARIO**

BETWEEN:

SAMANTHA WEHRLE

-and-

COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

Panel Members:

Jacqueline White	Professional Member, Panel Chair
Amanda Acker	Professional member
Margaret Wade	Public member

Participants:

Samantha Wehrle	Self-Represented
Ahmad Mozaffari	for the College of Dental Hygienists of Ontario
Elyse Sunshine	Independent Legal Counsel

Heard: October 11, 2023

DECISION AND REASONS FOR DECISION ON REINSTATEMENT APPLICATION

A panel of the Discipline Committee of the College of Dental Hygienists of Ontario (the “**Panel**”) heard this matter virtually by Zoom videoconference on October 11, 2023.

INTRODUCTION

The Applicant, Samantha Wehrle, applied for reinstatement of her certificate of registration in accordance with s. 72 of the *Health Professions Procedural Code* (the “**Code**”), Schedule 2 to the *Regulated Health Professions Act, 1991, SO 1991, c. 18* (“**RHPA**”). The Discipline Committee revoked the Applicant’s certificate of registration effective July 24, 2018, after it found that she had engaged in the sexual abuse of a patient.

The College did not oppose the Applicant’s application for reinstatement.

The Panel made an order that the Registrar should reinstate the Applicant’s certificate of registration.

FINDINGS OF PROFESSIONAL MISCONDUCT

The Client received dental hygiene treatment with the Applicant on or about June 5, 2015, November 21, 2015, February 27, 2015, and April 16, 2016. The Applicant and Client were romantically involved for approximately 8 years and their relationship included sexual intercourse. The Applicant understood that she could not treat the Client because of the intimate sexual nature of their relationship but began to treat him in 2015 because she mistakenly understood that an exemption had been enacted that allowed dental hygienists to treat their spouses. However, during that time period, there was no “spousal exemption” which would permit a hygienist to provide treatment to their spouse.

After a hearing which proceeded by way of an Agreed Statement of Facts and Joint Submission on Penalty, the Applicant admitted, and the Discipline Committee found, that such conduct constituted professional misconduct contrary to:

1. Clause 51(l)(b.l) of the Code: sexual abuse of a patient;
2. Paragraph 2 of section 15 of Ontario Regulation 218/94 (the “**Misconduct Regulation**”) under the *Dental Hygiene Act, 1991* (the “**Act**”): contravening a standard of the profession;
3. Paragraph 47 of the Misconduct Regulation: contravening by act or omission, the Act, the RHPA or the regulations under either of those Acts;
4. Paragraph 52 of the Misconduct Regulation: engaging in conduct or performing an act, relevant to the practice of the profession, that having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
5. Paragraph 53 of the Misconduct Regulation: conduct unbecoming a dental hygienist.

As is statutorily required following a finding of sexual abuse including sexual intercourse, the Discipline Committee directed that the Registrar revoke the Applicant’s certificate of registration, effective July 24, 2018.

SUBMISSIONS OF THE APPLICANT

The Applicant submitted that she was now permitted to seek reinstatement of her certificate of registration with the College since more than five years had lapsed since revocation was ordered by the Discipline Committee.

She noted that during the events at issue, she had fully cooperated with the College and while her conduct had occurred in the context of a mistaken belief, she did not excuse her conduct and took complete ownership of her mistakes. The Applicant submitted that she had learned from this experience and if she was ever uncertain about her professional obligations in the future, she would communicate with the College and not make assumptions.

The Applicant explained that she remained in a committed relationship with the Client, who is now her husband. The Applicant provided letters of support from individuals, including her husband, who provided evidence as to her good character and that she had been, and would be, an asset to the profession.

The Applicant submitted and provided evidence that she had completed a dental hygiene refresher course in April 2023 and in addition, had completed 17 hours of continuing education activities.

The Applicant further submitted that the public would be adequately protected if she was permitted to return to the profession. She stated that the conduct at issue (treatment of a spouse) is no longer considered to be misconduct for dental hygienists and the Applicant is aware of her professional responsibilities.

SUBMISSIONS OF THE COLLEGE

The College submitted that it did not take a position on the Application. The College noted that the onus for the Application was on the Applicant and the standard for the Panel to consider was that of a balance of probabilities. The College outlined the reinstatement provisions in the legislation and the factors from the common law that could be considered by the Panel in deciding whether to grant the Application.

DECISION

The Panel carefully considered the parties' submissions, the reinstatement provisions of the Code, the registration requirements for dental hygienists and the case law, and made an order directing the Registrar to reinstate the Applicant's certificate of registration.

REASONS FOR DECISION

Section 72 of the Code provides that a person whose certificate of registration has been revoked because of disciplinary proceedings may apply for reinstatement. If the reason for the revocation was because a finding of sexual abuse of a patient was made, the application cannot be made earlier than five years after the date on which the certificate of registration was revoked. This is applicable to the within case as more than five years have passed since the Applicant's certificate of registration was required to be revoked by the Discipline Committee.

The Applicant bears the burden of proof to establish suitability for reinstatement of her certificate of registration. The standard of proof is the balance of probabilities. In other words, the Applicant was required to satisfy us that it is more likely than not that she is a suitable candidate for reinstatement.

The general requirements for a certificate of registration that are set out in O. Reg. 218/94 under the Act apply to an application for reinstatement. We considered the non-exemptible requirements, specifically:

1. whether there was anything in the Applicant's conduct that afforded reasonable grounds for the belief that she will not practice the profession safely and with decency, integrity and honesty, and in accordance with the law; and
2. whether the Applicant could meet the current standards of practice in Ontario.

In this regard, we considered whether the public would be adequately protected if the Applicant were readmitted to the profession. We considered the past conduct of the Applicant, and whether there was a risk of her reoffending. The Panel finds that the risk of the Applicant reoffending is low. The conduct at issue is no longer considered to be misconduct because of an exemption that has been effective since October 8, 2020. Subsection 1 (5) of the Code applies in respect of dental hygienists in Ontario. This means that currently, a dental hygienist can treat their spouse without such treatment constituting sexual abuse of a patient, subject to the sexual relationship being kept entirely out of the office setting. The definition of "spouse" for these purposes is limited to:

- (a) a person who is the dental hygienist's spouse as defined in section 1 of the *Family Law Act*; or
- (b) a person who has lived with the dental hygienist in a conjugal relationship outside of marriage continuously for at least three years.

We also accept the Applicant's submissions that she made a mistake in understanding her professional obligations at the time. We note that notwithstanding her error, she took, and continues to take, responsibility for her actions. The Applicant has clearly learned from this matter and will ensure that she uses appropriate measures in the future to seek clarity about her professional and legal obligations where required.

We further considered whether there was current evidence of good character and rehabilitation. The Panel was provided with several letters from individuals attesting to the Applicant's character and commitment to the profession. We noted that the letter from the office manager of the dental clinic where the Applicant previously worked, dated August 3, 2023, describes the Applicant as someone with great integrity, communication, and dedication. The office manager notes that the Applicant is an asset to the dental profession. Her former colleagues from the dental clinic similarly describe the Applicant as honest, respectful and trustworthy, and someone who provided the best possible care for her patients. We accepted these letters as evidence of the Applicant's good character.

We understand that one of the factors that we may consider is whether the Applicant has made restitution to the individual impacted by her conduct. In this case, we had evidence from the Client (the Applicant's spouse) that he had only sought treatment from the Applicant because of his anxieties in attending the dental office and felt more comfortable with the Applicant. He recognized that the Applicant had made a significant error in treating him during the time period

in question, but he did not feel negatively impacted by her conduct. As such, restitution was neither required nor warranted.

The Panel also considered the current competence and skills of the Applicant. Because the Applicant has not practiced for more than five years, it is necessary that the Panel ensure that the Applicant successfully complete a refresher/remediation program. There was evidence before the Panel that the Applicant has already completed a program which included both theoretical and hands-on components. In addition to this refresher program, the Applicant has engaged in a significant amount of continuing education. The Panel finds that this refresher and the courses will ensure that the Applicant meets the current standard of practice in Ontario.

In all of the circumstances, the Panel was satisfied that it was in the public interest to allow the Applicant to be readmitted to the profession.

I, **Jacqueline White**, sign this Decision and Reasons for the Decision as Chair of this Discipline Panel and on behalf of the members of the Discipline Panel as listed below:



Jacqueline White, Chair, Professional Member

November 9, 2023

Date

Amanda Acker
Margaret Wade